



THE HARPER RECORD

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Policy Drought

The Harper government's mismanagement of Canada's water

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AS MARTIN LUTHER King once said, “legislation will not change the heart, but it will restrain the heartless.”

When it comes to fresh water in Canada, the Council of Canadians has long lamented that, without a national water policy, Canada's water has very weak or non-existent safeguards to protect against bulk exports, contamination, and unsustainable commercial exploitation.

As University of British Columbia Professor Karen Bakker explains, Canada is one of the few industrialized countries in the world that does not have legally enforced water quality standards.¹ In addition, the Great Lakes are polluted and being drawn down faster than recharge can replenish them. Lake Winnipeg is deeply polluted. The Athabasca River's very existence is imperilled by unsustainable consumption in the production of heavy oil in the Alberta tar sands. A leaked Environment Canada memo acknowledged in 2005 that Canada had a “looming fresh-water crisis,” but that no one was minding the store.²

Today, under the neoconservative agenda of the Harper government which has given increasing power to corporations, there is a more urgent need to “restrain the heartless” than ever before.

The drinking water crisis and the privatization of water services

Continued negligence of the infrastructural needs of municipalities and Aboriginal communities has led to a drinking water crisis that is shameful in a rich country like Canada.

Since the Conservative government first announced its national water strategy — largely a patchwork of funding proposals — in its October 2007 Throne Speech, it has done very little to improve access to safe drinking water in Canada.

A strategy for safe drinking water in First Nations communities was launched in March 2006, but, according to the May 6, 2008 Canadian Medical Association Journal (CMAJ), a staggering 93 advisories about unsafe water were in place in First Nations communities as of February 29, 2008. The Conservative government promised a clean water strategy in March 2007. Yet a year later, the CMAJ revealed that there were 1,766 boil-water advisories in effect across the country.

The drinking water crisis is seen as an opportunity for big business involvement. The CIBC, one of Canada's largest banks, released a report in November 2006 peddling the benefits of investing in water. While those of us who see water as a fundamental right are outraged that our governments have neglected water infrastructure in communities across the country, the CIBC sees crumbling infrastructure as a great opportunity for private corporations to make profits, and the Conservative government is committed to facilitating the process. It announced this year that it would be placing public money destined for water infrastructure into the hands of water profiteers.

Municipalities were once again denied much-needed funding for crumbling infrastructure in the Harper government's 2008 budget, which announced a \$1.26 billion investment in a new Crown corporation to build private-public partnerships called PPP Canada Inc.³ *Invest in Canada*, a government website aimed at promoting business opportunities in Canada to foreign investors, touts this development as an added incentive for foreign corporations. In other words, rather than using public funds to support municipalities struggling to meet the needs of their communities, the Canadian government is promising subsidies to

foreign multinationals, enabling them to profit from water distribution and treatment, and other essential services in Canadian communities.

Invest in Canada also boasts that Canada reported an 11th consecutive annual surplus in the fiscal year of 2007–08. In 2006, Canada was the only G-7 country to have a surplus.

Bulk water exports

The Harper government continues to deny the threat of growing pressure from the United States to import Canada's water, and has disregarded repeated calls from the Canadian public to ban bulk water exports.

In April 2007, the Council of Canadians obtained a leaked document produced by a Washington think-tank revealing that business and government leaders in Canada, the U.S. and Mexico were actively discussing bulk water exports within the context of the Security and Prosperity Partnership of North America (SPP), a plan to harmonize policies and regulations and to facilitate corporate access to natural resources in Canada, the United States and Mexico.⁴

When information about a closed meeting to take place in Calgary involving high-ranking government officials and business representatives from all three countries was released to the media, it generated a strong public outcry. The Conservative government was forced to withdraw its delegation from the meeting.

However, Environment Minister John Baird not only denied the federal government's involvement in the meetings, but also argued that existing legislation provided adequate protection against bulk water exports. He erroneously told the media: "Canada has restrictions in place to prohibit bulk removal of water, including diversion, backed by serious fines and/or imprisonment."⁵

Fortunately, the Conservative government is now increasingly isolated in this view. Prompted by the evidence obtained by the Council of Canadians that the SPP would force Canada to export water to the United States, the House of Commons passed a motion in June 2007, requesting that the federal government begin talks with our United States and Mexico partners to have water excluded from NAFTA. Over

a year later, the Conservative government has yet to follow through on this motion.

The reality is that Canada does not have jurisdictional control of its water resources under NAFTA, which means our federal government has to rely on weak environmental “exemptions” to NAFTA rules to protect water. These have proven to be inadequate in preventing bulk water exports, as have the voluntary provincial bans often cited by Environment Minister John Baird.

In a winter 2003 paper in the *Canadian Public Administration Journal*, Timothy Heinmiller of McMaster University reported that free trade agreements brought a series of new institutional constraints that have seriously limited the role of the Canadian government in determining water policy.⁶

NAFTA defines water as a “service” and an “investment.” This means that, once a province lifts its voluntary ban on bulk water exports, NAFTA rules will take effect to prevent our governments from restricting such exports.

Both Ontario and Newfoundland, at different times, have attempted to lift the ban in order to allow corporations to export water in bulk. Both provinces eventually backed away from the plan, but only after intense public pressure.

Another incident that exposed the precarious state of Canada’s water under NAFTA was the challenge launched by Sun Belt Water Corporation of Santa Barbara, California, against the Canadian government when the government of British Columbia banned bulk water exports in 1991.

Environmental exemptions could not prevent Sun Belt from invoking NAFTA’s chapter 11 provision, which allows corporations from one NAFTA country to sue the government of another NAFTA country for financial compensation if that country changes the rules of business in a way that adversely affects the company. The company claimed US\$10 billion in damages from the Canadian government.

Jack Lindsay, Sun Belt’s CEO, put it bluntly when he stated: “Because of NAFTA, we are now stakeholders in the national water policy of Canada.”⁷

If not for unflagging public opposition, there is no doubt that corporate-driven trade deals would have precipitated the establishment of a lucrative industry of bulk water exports to a thirsty U.S. market a long time ago.

The right to water

The Canadian government's corporate-centred approach to water has also directly affected the global movement for water justice.

The rapidly growing international crisis of water shortages, water pollution, and lack of access to safe clean drinking water and sanitation, broadly referred to as the global water crisis, has prompted a call amongst water activists for a new international framework that would protect water from corporate takeover by ensuring formal recognition of water as a human right in international law.

The Canadian government has consistently opposed the recognition of water as a right at the United Nations. Most recently, the Harper government played a key role in watering down a motion by Germany and Spain to officially recognize water as a human right at the UN Human Rights Council in March 2008.

This was the third time in six years that member nations of the UN have pushed for recognition of the human right to water. On each occasion, Canada blocked these efforts.

At a 2002 meeting, Canada stood alone among 53 countries by voting against the appointment of a special rapporteur on water. More recently, Canada reacted negatively to an October 2006 resolution of the UN Human Rights Council to conduct a study on the right to water.

In March 2008, Canada worked to weaken the resolution by demanding that references to the right to water and sanitation be removed and that the scope be reduced. The initial resolution called for the appointment of a "special rapporteur," but Canada saw to it that this position was downgraded to that of an "independent expert," serving only a one-year term instead of the proposed three years. Canada also opposed visits by this expert to individual countries and the granting of a mandate enabling the expert to clarify the content of the right to water and sanitation.⁸

The Liberal party defended the Harper government's position in the media, claiming that a right to water would make Canada vulnerable to bulk water exports. This is utterly untrue.

All trans-boundary water issues were explicitly excluded from the scope of the 2008 resolution. In addition, a human rights convention is between a government and its citizens. Recognition of the right to water in no way affects a country's sovereign right to manage its own resources.

The reality is that the resolution would be at odds with NAFTA, which defines water as a service and an investment. The real issue is that the Conservatives refuse to reopen NAFTA to remove water. They would rather deny Canada and the world the right to water.

Recognizing water as a human right is vital to ensuring that governments address the reality of more than a billion people who are currently without access to clean water.

Lakes and tailing impoundment areas

The privatization of water achieved a new height in Canada when Environment Canada announced in 2005 that 11 lakes would be used as tailing impoundment areas, or dump sites for the toxic waste of metal mining corporations.⁹

According to a June 2008 CBC report, a total of 16 Canadian lakes are already "slated to be officially but quietly 'reclassified' as toxic dump sites for mines. The lakes include prime wilderness fishing lakes from B.C. to Newfoundland."¹⁰

Mining Watch Canada predicts that number will soon increase. "The fate of many of these lakes has yet to be decided, but there is currently a strong bias within the government toward allowing the use of water bodies to receive mine wastes," says the organization. Once a lake is considered a "tailing impoundment area," according to Mining Watch, it is no longer protected under the federal *Fisheries Act*. Public consultations so far have been inconsistent and inadequate.

The long-term responsibility of dealing with the social and environmental consequences of the destruction of a lake will undoubtedly lie with the community and local government, not the company.

Furthermore, the contamination of a water body will have devastating consequences on entire watersheds, and the building of dams and diversions to contain the contamination will only make things worse in the long run.

Canada needs a national water policy

Two years under the Harper regime have made it clear that we need a national water policy that affirms the right to water. Harper's patchwork of funding proposals are not a substitute for robust legislation that protects Canadian water from commodification, diversion, bulk exports, and privatization.

An April 2008 survey conducted by Environics for the Council of Canadians disclosed that 89% of Canadians want a national water policy that would ban bulk water exports and recognize water as a human right. The growing push for private sector involvement in water services, the destruction of Canadian lakes, and the alarming rates of boil-water advisories underscore the urgent need for such a policy.

Core elements should include:

- watershed management and restoration;
- national drinking water standards;
- groundwater mapping and protection;
- an assessment of the viability of the virtual water being used in commodity exports;
- strict enforcement of laws against polluters;
- a serious climate change policy;
- protection of mountain habitat (the source of 50% of our water);
- sustainable food production policies;
- taxation to reflect the real environmental cost of commercial water extraction;
- a moratorium on new production in the tar sands;

- the removal of water as a service and an investment from NAFTA;
- a ban on the commercial export of Canada's water;
- a high-level emergency colloquium on the Great Lakes;
- strategies to reduce bottled water consumption and a re-investment in public water infrastructure;
- re-investment in research and scientific oversight of our freshwater supplies;
- adoption of the public trust doctrine to oversee our surface and groundwater sources as a commons;
- a water service charge regime based on the principle of equity as well as conservation; and
- support for the right to water at the United Nations.

Importantly, Canada needs to replace the current model of planning for massive growth and then trying to find the resources to accommodate this growth with a model that builds our economy around the need to protect water. Such a policy would likely mean a new emphasis on local food production and manufacturing, and more sustainable living in every aspect of our lives.